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19 **UNITED STATES DISTRICT COURT**
20 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN JOSE DIVISION**

22 REGENTS OF THE UNIVERSITY OF
23 MINNESOTA,

24 Plaintiff,

25 vs.

26 LSI CORPORATION and AVAGO
TECHNOLOGIES U.S. INC.,

27 Defendants.
28

Case No.: 5:18-cv-00821-EJD-NMC

**PLAINTIFF'S STATEMENT
REGARDING INTENDED
PRESENTATION OF DAMAGES CASE**

Pursuant to the Court's Order Regarding Motions in Limine ("MIL Order," Dkt. 405), Plaintiff Regents of the University of Minnesota ("UMN") respectfully submits this statement discussing at a [REDACTED] how it intends to present its damages case following the Court's *Daubert* Order ("*Daubert* Order," Dkt. 393). As the Court observed, [REDACTED] Dkt. 405 at 4, and UMN reserves all rights in connection therewith.

If a jury finds the '601 Patent to be infringed and not invalid, UMN is entitled to recover "damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer." 35 U.S.C. § 284. UMN intends to present a robust case regarding the value of LSI's infringement and the corresponding reasonable royalty to which UMN is entitled, consistent with the Court's *Daubert* and MIL Orders.

To start, UMN intends to introduce testimony and documentary evidence from both UMN and LSI fact witnesses that bear on issues critical to the hypothetical negotiation framework and reasonable royalty, including, *inter alia*, the value of the patented methods, LSI's uses of the infringing technology, LSI's extensive design, development, and sales cycle (collectively, the "Sales Cycle"), LSI's own views of the value of its infringing technology, the competitive and financial landscape facing LSI around the date of first infringement, LSI's projections and sales records for the accused products, and UMN's and LSI's licensing practices. Additionally, UMN's technical expert will testify about LSI's and its customers' uses of the infringing technology and the technical benefits from using the patented methods. UMN's industry expert will then situate those uses within the broader context of LSI's Sales Cycle, identify their value to LSI, and explain why those uses were essential to LSI achieving design wins and reaching volume production of SoCs.

Using those inputs and her extensive review and analysis of the record evidence and other reliable sources identified in her expert report, Ms. Lawton will testify about the damages opinions reflected in her report, with the exception of her [REDACTED]

[REDACTED]¹ Dkt. 393 at 18. In other words, Ms. Lawton will testify,

¹ UMN respectfully disagrees with the Court's determination that [REDACTED]

[REDACTED] Dkt. 393 at 18, for the

1 [REDACTED] to [REDACTED]
2 without presenting [REDACTED]. See Dkt. 405 at 4. Those [REDACTED]
3 include Ms. Lawton's underlying evaluation and resulting opinions regarding (i) her patent valuation
4 analysis, including the income and market approaches and resulting valuation metrics, such as the
5 [REDACTED]
6 [REDACTED]” (*id.*), (ii) the analytical approach finding
7 [REDACTED] and (iii) the hypothetical negotiation approach,
8 including, consistent with her report, her discussion of the *Georgia-Pacific* factors and the upward or
9 downward pressure those factors put on the reasonable royalty determination.

10 Additionally, Ms. Lawton will present the three royalty bases she opines are appropriate for
11 the determination of a reasonable royalty:

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 See Lawton Report, Dkt. 331-13, at Table 8.7. The Court already has [REDACTED]
16 [REDACTED] See Dkt. 393 at 10-14 ([REDACTED]
17 [REDACTED]
18 [REDACTED] *id.* at 17-18 ([REDACTED]
19 [REDACTED] *id.* at 18 [REDACTED]
20 [REDACTED]

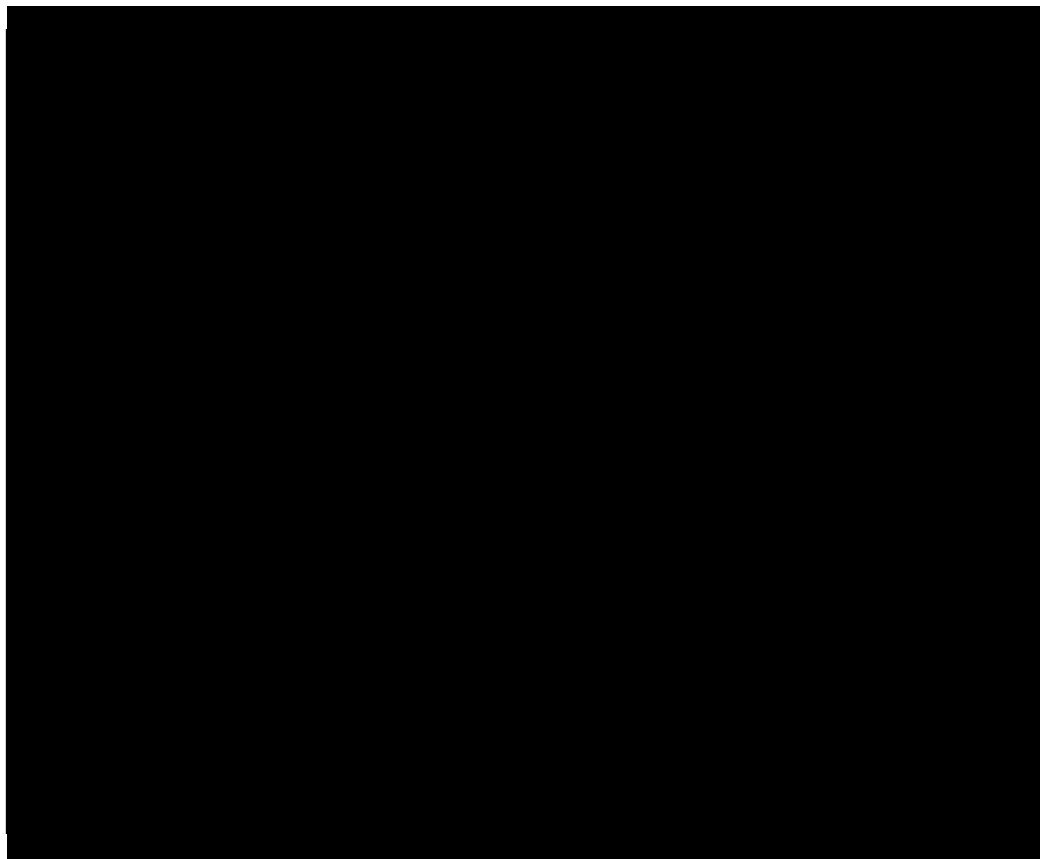
21 By way of further specifics on the presentation of Ms. Lawton's valuation metrics and
22 ranges, Ms. Lawton expects to present the constellation of approaches and analyses that are
23 summarized at Table 7.13 of her report (Dkt. 331-13), and which Ms. Lawton opines the parties
24
25

26
27 reasons UMN's counsel stated on the record at the final pretrial conference. See Mar. 6, 2025 Final
28 Pretrial Conference Tr. at 61-64. Notwithstanding any statements made herein, UMN reserves all
rights in connection with the Court's ruling for purposes of appeal or otherwise.

1 would consider at the hypothetical negotiation.² In presenting those approaches and her analysis,
 2 Ms. Lawton would explain each approach, how she arrived at the valuation metrics, and how the
 3 parties to the hypothetical negotiation would view the valuation metrics. LSI, of course, will have
 4 the opportunity to cross-examine Ms. Lawton as to her analysis.

5 Addressing the matters specifically raised in the MIL Order, Ms. Lawton will not [REDACTED]
 6 [REDACTED]
 7 [REDACTED] Dkt. 405 at 4. She also will not [REDACTED]
 8 [REDACTED] nor will she
 9 [REDACTED] *Id.* Instead, Ms. Lawton
 10 will arm the jury with the relevant facts and analyses on valuation and the hypothetical negotiation,
 11 including a range of valuation metrics, from which the jury can determine what it believes an
 12 appropriate reasonable royalty rate (and ultimate reasonable royalty) to be. By way of illustration,
 13 UMN may present Ms. Lawton's various metrics to the jury through demonstrative slides along the
 14 lines of the following, which highlights the parties' perspectives at the hypothetical negotiation
 15 (including the bounds on LSI's willingness to pay and UMN's willingness to accept):
 16
 17

18 ² Pursuant to the Court's order that [REDACTED]
 19 [REDACTED]
 20 [REDACTED] Dkt. 393 at 17, before presenting this table to the jury,
 21 UMN would update the description of the 2012 *CMU v. Marvell* jury verdict to reflect the \$0.50 per
 22 unit rate of the verdict and remove the reference to a [REDACTED]
 23 [REDACTED] Ms. Lawton's testimony on the \$0.50 per unit
 24 royalty in *CMU v. Marvell* still functions as, and is appropriate for the jury to consider as, a
 25 reasonableness check. That reasonableness check is not [REDACTED]
 26 [REDACTED] Dkt. 405 at 3, but rather against all of the
 27 other valuation metrics offered in the Table 7.13 that are part of Ms. Lawton's analysis and part of
 28 what the jury should be entitled to consider in selecting a rate.



This illustrative slide makes clear that Ms. Lawton will not opine that any particular metrics or valuation ranges, standing alone, represent a reasonable royalty rate.³

In closing argument, UMN expects to present again to the jury the constellation of valuation metrics described by Ms. Lawton (perhaps by displaying the demonstrative above), and to focus the jury on the apportioned valuation ranges, consistent with Ms. Lawton's testimony and the other evidence admitted at trial. UMN also expects to address any royalty rate and valuation metrics to which LSI's damages expert, Mr. McGahee, opines at trial. UMN cannot identify at this point which specific subsets of metrics it will focus on in its closing, as that will depend on how the evidence comes in at trial, but UMN does not expect at this time to ask the jury to award a single, specific royalty rate. Instead, and as the Court observed at the Pretrial Conference, UMN's counsel anticipates performing some exemplary math to assist the jury, *i.e.* multiplying illustrative royalty

³ All of the data points on this slide are disclosed in and supported by Ms. Lawton's report. *See* Dkt. 331-13 at ¶ 933 (Table 7.13 of valuation metrics); *id.* at ¶¶ 748-852 (income approach analyses); *id.* at ¶¶ 873-928 (market approach analyses); *id.* at ¶¶ 956-58 (analytical approach analysis).

1 rates within the presented rate ranges by the royalty bases to which Ms. Lawton and/or Mr.
 2 McGahee opine. *See* Mar. 6, 2025 Final Pretrial Conference Tr. at 66 (“Counsel are going to get up
 3 and do the math in realtime.”); *id.* (“[It seems like one of them is going to have to stand up as the
 4 easel and do the math.”). This will serve both to present to the jury a range of reasonable royalty
 5 options based on the evidence and to illustrate how the jury could do its own math if it elects to
 6 apply other rates or bases.

7 As detailed above, UMN’s intended approach conforms to the Court’s Orders. It also
 8 conforms to the established law on patent damages, which (i) does not require a damages expert to
 9 opine to a single royalty rate and (ii) allows the jury to select a rate based on the range of evidence
 10 with which they are presented. *See Bayer Healthcare LLC v. Baxalta Inc.*, 989 F.3d 964, 985 (Fed.
 11 Cir. 2021) (“While an expert must use reliable methodology for determining the range of possible
 12 hypothetical negotiation royalty rates, we are aware of no precedent that requires an expert to
 13 provide a single proposed royalty rate. As an initial matter, a jury is entitled to choose a damages
 14 award within the amounts advocated by the opposing parties and is not bound to accept a rate
 15 proffered by one party’s expert but rather may choose an intermediate royalty rate. ... In addition,
 16 we have previously held that a jury’s damages award that fell within the range suggested by the
 17 patentee’s damages expert was supported by substantial evidence.” (internal quotations and citation
 18 omitted)); *SmithKline Diagnostics, Inc. v. Helena Labs. Corp.*, 926 F.2d 1161, 1167–68
 19 (Fed.Cir.1991) (“[T]he factual determination of a reasonable royalty, however, need not be
 20 supported, and indeed, frequently is not supported by the specific figures advanced by either party....
 21 [T]he district court may reject the extreme figures proffered by the litigants as incredible and
 22 substitute an intermediate figure as a matter of its judgment from all of the evidence.”); *cf. Apple Inc.*
 23 *v. Motorola, Inc.*, 757 F.3d 1286, 1327 (Fed. Cir. 2014), *overruled on other grounds by Williamson*
 24 *v. Citrix Online, LLC*, 792 F.3d 1339 (Fed. Cir. 2015) (“[A] finding that a royalty estimate may
 25 suffer from factual flaws does not, by itself, support the legal conclusion that zero is a reasonable
 26 royalty. . . . [T]he fact finder is still required to determine what royalty is supported by the record.”).

27 If the Court seeks additional information on Ms. Lawton’s intended trial testimony, UMN
 28 respectfully requests the opportunity to proffer Ms. Lawton *in camera* in advance of her testimony.

Respectfully submitted,

Dated: March 14, 2025

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been served on all counsel of record via the Court's ECF system on March 14, 2025.

/s/ Patrick J. McElhinny

Patrick J. McElhinny